the vehicle in the sense of operation. The rules are entitled Conditions of Fitness, Equipment and Use; penalties only apply to Part II and Part III. The penalty clause applies to a person who uses or permits to be used the vehicle, who will be the operator of the service unless the rule shows that his servant is included or intended instead. Rule 62 does not apply to carriage of goods for reward. But certain substances though of themselves dangerous may be "carried" if safely packed. I think this was intended to mean substances "for the use of the vehicle". It becomes difficult to understand why there should be a rule permitting dangerous substances to be carried if packed in a certain way unless it means substances necessary for the use of the vehicle; the reference to the possibility of accident to the vehicle also shows I think that the rule relates to substances necessary for use, that is used in operation of the vehicle and which of course will be there whatever accident may occur. This rule, read with rule 31, is sufficiently certain as to the person commanded but whether the standard of packing laid down is anything more than a counsel of perfection I take leave to doubt.

I therefore think no driver or conductor could be prosecuted under this rule. For these reasons the conviction is quashed.

Conviction quashed.

[APPELLATE CRIMINAL JURISDICTION]

HOWES, J.

June 21, 1940.

CHUNG KOK YEANG

vs.

PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 64 of 1940]

Probate and Administration Enactment (Cap. 8), section 101—Penal Code (Cap. 45), section 176—Resealed grant—Inventory—Foreign executor's duty to exhibit—Intentional omission.

The appellant was the executor of C.T.C. deceased. He obtained probate of the will in Penang and later the Grant of Probate was resealed in Ipoh. On the 27th June, 1939, the appellant was served with a requisition under section 101 (iii) of the Probate and Administration Enactment requiring him to file an inventory. On request, the time for exhibiting the inventory was extended to the 22nd August, 1939. The appellant instructed his solicitors to file an account, but said nothing about an inventory. The inventory was not filed and on the 18th January, 1940, a summons was issued charging the appellant with an offence under section 176 of the Penal Code, and he was convicted.

Held, there was no evidence that the solicitors had, in disregard of instructions, failed to supply the inventory. The appellant was legally bound to exhibit the inventory and he had omitted to do so. A man is presumed to have intended his acts, which include omissions, and if the omission cannot be accounted for it must be regarded as intentional. It is a question of fact as to what amounts to an intentional omission.

Held further, where a foreign probate has been resealed in the Federated Malay States the executor has all the rights and obligations of an executor to whom the grant has been made by this Court, including the obligation to exhibit an inventory.

Held also, after the expiration of the periods mentioned in section 101 (i) (a) and (b) of the Probate and Administration Enactment, the Court may at any time call for an inventory or account. The Court may do this of its own motion, and the word "Court" includes "Registrars."

Case referred to:—

(1) *Ex parte Blain, In re Sawers* (1879) 12 Ch. D. 522.

F. A. Reid for appellant.

T. V. A. Brodie, Deputy Public Prosecutor, for respondent.

Howes, J.—In this case the appellant was convicted and fined $10 on the following charge: "That on 27th June, 1939, you as executor of Chung Thye Chong were required under section 101 of the Probate and Administration Enactment by the Supreme Court, Ipoh, to exhibit therein an inventory of the estate of the said Chung Thye Chong within 30 days and you have intentionally omitted to comply with the requisition and you are thereby deemed to have committed an offence punishable under section 176 of the Penal Code."

The appeal has been argued under three main heads. The first was whether it was proved that the appellant had intentionally omitted to comply with the requisition to exhibit an inventory.

Whilst the words "intentionally omits to comply" in section 101 sub-section (iii) are somewhat difficult to interpret, the Magistrate found as a fact that the appellant had done so.

It appears that on June 27, 1939, the requisition referred to in section 101 (iii) of the Probate and Administration Enactment was served on the appellant, requiring him to file an inventory within 30 days from the date of the notice, viz., the 19th June, 1939.

Application was made by the appellant's solicitors to the Assistant Registrar and the time for exhibiting the inventory was extended another 30 days, viz., to

the 22nd August, 1939. The inventory was not filed within this time, and on 18th January, 1940, a summons against the appellant was issued, out of which the present appeal arose.

In a letter dated 20th July, 1939, to his solicitors Messrs. Cheng Ean & Soon Chee of Penang, the appellant wrote: "With regard to the accounts required by the Registrar of the Supreme Court, Ipoh, I am afraid I cannot do anything except file an account showing the $30,000 on which estate duty has been paid in the Colony. I believe the estate of Chung Thye Chong deceased has no other assets in the Federated Malay States on which estate duty is payable."

No mention in that letter is made of the preparation of any inventory, but the appellant told the Magistrate that he thought his solicitors would file an account and inventory, and consequently he took no further steps.

In his evidence, the appellant admitted having received the requisition, and stated, "I tried to comply with it." In addition to the above letter, he produced an itemised bill of costs from his solicitors which showed that he consulted them in Penang on the 6th, 11th, 13th and 15th of December, 1939, with regard to the accounts, but there is no mention of their having received instructions to prepare the inventory which was the subject matter of the charge.

In the Magistrate's Court a clerk to the appellant's solicitors gave evidence, and stated referring to the paragraph in the letter above quoted, "We took this as instructions to file accounts. We set about getting the material. We thought we had to prepare an estate duty account for the Federated Malay States".

This witness made no mention of the preparation of an inventory. The question therefore arises as to whether this omission to file an inventory can be regarded as intentional.

There was no suggestion that appellant's omission was accidental, and he gave no evidence to show that it could be regarded as otherwise than intentional. Had he been able to produce evidence of any direct instructions to his solicitors to prepare the inventory and accounts, it might well have been that the Magistrate would have considered that the appellant had done all he could reasonably do.

As it was, the appellant sought to take shelter behind his solicitors, who were not called as witnesses. If there had been evidence that, in disregard of instructions from him, they failed to supply the inventory, or if the appellant had shown that he had given them material with which to prepare the inventory, the position would have been different. The appellant was well aware of his obligations; and the fact that he applied for, and obtained an extension of time from the Registrar, but took no further steps, proves this.

It is clear that the appellant was legally bound under a statutory obligation to exhibit the inventory. His omission to do so was proved; and if the omission cannot be accounted for, it must be regarded as intentional. A man is presumed to have intended his acts; and this applies with equal force to his omissions.

As to what amounts to an intentional omission, the question is one of fact, and depends on the circumstances of the case. In the present case, the Magistrate had ample material on which to base his conclusions.

I hold therefore that the finding by the Magistrate that the appellant intentionally omitted to comply with the requisition was correct.

The second head of appeal is that the Probate and Administration Enactment has been misinterpreted. *Mr. Reid* maintained that the Enactment did not apply in the case of a foreign probate which had been resealed in the Federated Malay States. I do not consider his arguments are well founded.

Section 158 which deals with the sealing of probates and letters of administration granted outside the Federated Malay States makes it clear that where once the probate has been sealed with the seal of the Federated Malay States Court the probate shall be of like force and effect, and have the same operation in the Federated Malay States as if granted by that Court.

The effect of this is that a foreign executor has all the rights and obligations of an executor appointed by this Court, as set out in the Probate and Administration Enactment, and this includes his obligation under section 101 sub-section (i) (*a*), to exhibit an inventory within six months from the grant of probate, or within such further time as the Court may appoint.

This obligation is statutory, and it is not for me to question its advisability. In these States, it is difficult to exercise control over executors or administrators; and no doubt, for the better protection of ignorant and illiterate beneficiaries, the Enactment requiries that an inventory and accounts shall be filed both by executors and administrators.

Mr. Reid questioned the applicability of section 101 (iii) to a foreign executor, it being a penal clause, and consequently should be construed strictly. He maintained it should only apply to executors and administrators to whom the Federated Malay States Court has actually made the grant of probate or letters of administration.

If the Court held otherwise. he said, the result would be that a foreign executor or administrator would, by reason of section 158, by implication only, be brought within the scope of section 101 (iii).

In support, he referred to section 162, which, in the case of the bond required to be given by a foreign administrator, expressly provides that sections 79, 80 and 81 "shall be deemed to apply to any such bond".

He also referred to section 163, in which it is expressly stated that the law applicable to estate duties *including any penal provisions thereof* shall apply to persons applying for resealing of probate or letters of administration.

As regards section 162, this section was clearly necessary in the portion of the enactment which deals with resealing of letters of administration, so as to avoid a useless repetition of the provisions of sections 79, 80 and 81.

Section 163 is, properly speaking, an amendment to the Estate Duty Enactment; and it is difficult to understand why it was ever included in an enactment which amended the Probate and Administration Enactment.

The question of the applicability of English Statutes to foreigners was considered by James, L.J., in *Ex parte Blain, In Re Sawers*[1], where he stated:

> "It appears to me that the whole question is to be governed by the broad, general, universal principle that English legislation or British legislation is—unless the contrary is expressly enacted or so plainly implied as to make it the duty of an English Court to take cognisance of it—that British legislation is applicable only to British subjects or to foreigners who by coming into this country, whether for a long or for a short time, have made themselves during that time British subjects. Because every foreigner who comes into this country, for however limited a time, is, during his residence in this country, within the allegiance of the sovereign, entitled to the protection of the sovereign, and subject to all the laws of the sovereign. But if a foreigner remains abroad and has never come into this country at all, it seems to me impossible to imagine that the English legislature ever intended to make that man subject to particular English legislation."

It will be noted that the learned Lord Justice used the expression "or so plainly implied". In section 158 of the Probate and Administration Enactment we find something much stronger than a mere implication that a foreign executor shall be bound by the enactment, namely, the statement that when the foreign probate or letters of administration have been sealed they thereupon "shall be of the like force and effect and have the same operation in the Federated Malay States as if granted by that Court." This, in my opinion, amounts to an incorporation of the provisions of section 101.

In support of this view, in the rules to which I refer later, rule 10A provides that before resealing by the Court, the foreign executor or administrator must deposit the sum of $3 (or more if required) "to meet the expenses of the services of notices to file the inventory and accounts under section 101 of the Probate and Administration Enactment".

This, to my mind, shows clearly an intention to bring a foreign executor within the ambit of section 101, and consequently, within its penal jurisdiction.

I can see no legal objection to such a result, as ordinarily, the penal remedy could only be enforced when the executor is within the jurisdiction, and when once he is (as the present appellant was), he is obviously subject to the penal laws of the Federated Malay States.

The third heading of appeal. *Mr. Reid* has argued that the procedure from the issue of the notices was defective and improper.

Firstly, he contended that a Registrar has no power to extend the time allowed for exhibiting the inventory, by issuing the requisition after the time fixed by the Enactment has expired.

As to this point, there is no question of the Registrar having extended the time allowed by the Enactment; as until the six or twelve months mentioned in section 101 (i), (*a*) and (*b*) have expired, the Court has no power to call upon an executor or administrator to exhibit an inventory or account.

After the expiration of these periods, the Court may at any time call for the inventory or account.

Secondly, he says that the Court should not issue the requisition of its own motion, but only on the application by some beneficiary or creditor; as the effect would be that the Court becomes a plaintiff and a judge.

Section 101 (iii) shows that an executor or administrator can be required by the Court to exhibit an inventory or account and does not suggest that any application by a third person is necessary. It is clearly the duty of a Court to see that the executor or administrator complies with his statutory obligation to exhibit the same.

Under the Probate and Administration Enactment, "Court" includes Registrars where they are empowered to act; and under the "Rules for non-contentious business in the Supreme Court and in its probate jurisdiction" (Volume 1 Rules, p. 27), made under the Rule Committee (Supreme Court) Enactment (Cap. 13) in the Schedule of Forms thereto, p. 52 (v), appears Form 17 "Notice to file accounts" which is issued under Section 101 of the Probate and Administration Enactment, and that form is shown to be signed by the Registrar, and not by order of a Judge.

Under section 5 (ii) of Cap. 13, "In the event of inconsistency or conflict between any written law and a rule lawfully made under this Enactment the provisions of the rule shall prevail." Form 17 is part of the rules, and since this form is shown to be signed by a Registrar, this must be taken to empower him to issue the requisition under section 101 (iii) of the Probate and Administration Enactment, which might otherwise be held to be the function of a judge.

No form of "Notice to exhibit an inventory" appears in these rules, but as the power to issue this requisition is contained in the same section, viz., section 101 (iii) it would be unnecessary to set out a special form.

Rule 92 (p. 40) provides that the forms given in the schedule are intended as specimens only, and must be altered to meet the requirements of the case where this is necessary, and that is what has been done in the present case.

I am satisfied that the appellant was properly convicted of the offence with which he was charged, and that the legal objections raised by *Mr. Reid,* seeking to show (a) that the obligations of a "foreign" executor whose probate has been re-sealed, are any less than those of executors who receive their grant direct from a Federated Malay States Court, and (b) that the procedure in issuing the Notice to Exhibit an inventory, was defective and improper, cannot be supported.

The appeal is dismissed.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

Howes, J.

June 28, 1940.

SAKINAH ..... **Plaintiff**

vs.

KUA TEONG HOW ..... **Defendant.**

[PERAK ORIGINATING SUMMONS No. 37 of 1940]

Malay Reservations Enactment, 1913, Section 8—Limitation Enactment 1896, Section 19 (ii) Articles 101 and 114—power of attorney granting right or interest in reserved land void—chargee entering into possession a trespasser—Period of limitation.

Land subject to the Malay Reservations Enactment 1913, was charged to the defendant. The charge was repayable on the 8th June, 1920. The chargor, on the 10th June 1918, also granted a power of attorney to the defendant which purported to give him a right or interest in the land. The defendant went into possession of the charged land receiving the produce therefrom, and had remained in possession ever since. The chargor died on the 12th July 1921. On an application by way of Originating Summons for an order on the Collector of Land Revenue to record a memorial discharging the charge:

Held, (i) that the power of attorney was null and void and that the defendant in entering into possession of the charged land was a trespasser;

(ii) that the defendant's only claim was as chargee to recover his debt and that this was statute-barred after 12 years.

Cases referred to:

(*1*) *Idris v. Ng Ah Siew* 4 M.L.J. 257; (1935) F.M.S.L.R. 70

(*2*) *Gan Khor v. Soan* 4. M.L.J. 158; (1935) F.M.S.L.R. 39.

S. M. Sharma for Plaintiff.
Chin Swee Onn for Defendant.

Howes, J.—In this summons the plaintiff applies for an order that the Collector of Land Revenue, Telok Anson, be directed to record a memorial discharging Charge Presentation No. 261 of 1918 over the lands held under E.M.R. Nos. 834 and 846 respectively in the mukim of Utan Melintang.

Five issues have been framed by the plaintiff's advocate, and after some discussion, were adopted by the Court.

The issues are:

1. Is the defendant barred from claiming any relief under the charge dated the 10th day of June, 1918, executed by Serawan binti Kerta Pawero in favour of the defendant having regard to the